

**MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS  
COUNTY BOARD OF ADJUSTMENT HELD TUESDAY NOVEMBER 16, 2010  
NORTHLAND OFFICE CENTER, VIRGINIA, MN, 9:00 a.m. – 11:40 a.m.**

**Board of Adjustment members in attendance:**

Diana Werschay, Chair  
Tom Coombe  
Steve Filipovich  
David Pollock

**Board of Adjustment members absent:**

Kelly Klun  
Darlene Majkich  
Marilyn Mueller

Decisions/Minutes for the following public hearing matters are attached:

**NEW BUSINESS:**

- A. Gary and Patricia Larson, S21, T63N, R21W (Morse)
- B. Jerry Pybas, S26, T56N, R16W (unorganized)
- C. Kathy Tanski, S25, T51N, R16W (Grand Lake)
- D. Veli Torniainen, S19, T50N, R20W (Fine Lakes)
- E. Debrah Hunter, S9, T57N, R17W (Fayal)
- F. Jean and Frank Russ/Mark and Donna Leese, S35, T57N, R17W (Fayal)

**OTHER BUSINESS:**

**APPROVAL OF MINUTES FROM OCTOBER 19, 2010 MEETING:**

Motion by Coombe/Pollock, carried 4-0

**NEW BUSINESS:**

The first hearing item was **Gary and Patricia Larson, S21, T63N, R21W (Morse)**

The applicant was not present. Jenny Bourbonais presented the case to the Board. The property is located on the north side of Shagawa Lake. The applicants own two riparian acres and five acres north of Grant McMahon Boulevard. Issues with the property include the development along the shoreline, the topography of the property and lay of the land, and the applicants do not have a garage on their lake property near the existing dwelling. The steep topography on the property is on a ridge, not a bluff. The applicants would like to place the garage closer to the road than to the ridge. There is good screening in front of the proposed structure towards the lake. There is ledgerrock outcropping on the property north of the road and the applicants do not wish to build the garage there.

*Board member Filipovich* asked if the ground near where the garage would be is level. *Jenny Bourbonais* stated that this portion of the lot is fairly level. There is a tight squeeze where the garage would be located and there will be some space to turn around so that the applicants do not have to back onto the road.

*Donna O'Connor*, Environmental Services, via report, stated that the Larson home and shower house building is served by a peat filter to gravity mound system on operating permit 14539. The permit is current and up for renewal in 2014. System expansion area has been designated by an ISTS designer east of the driveway and is not impacted by the proposed garage. Environmental Services recommends that the replacement ISTS area be maintained and not impacted in a manner that will negatively affect the installation and operation of an ISTS.

The applicants were not present. No audience members spoke.

**CORRESPONDENCE:** *Jenny Bourbonais* read one letter into the record from Eugene Zabinski, Town of Morse Land Use Committee, in support of this variance and with recommended conditions.

## **DECISION**

**Motion by Filipovich/Coombe** to approve a new accessory structure at a 25 foot right of way and 38 foot road centerline setback from County Road 88/Grant McMahan Boulevard, with the following findings of fact:

1. The request of the applicant is substantial because the applicant is asking for variance to be 25 feet from road right of way and 38 feet from road centerline where St. Louis County Ordinance 46 requires a 35 foot right of way and an 85 foot centerline setback on a major collector road.
2. The variance will not have an effect on government services because there is existing development on the property with an existing access off of the highway and private well and septic system on the property. St. Louis County Public Works Department has stated that it is unlikely that this portion of the highway would be moved due in part to ledgerrock in the area, and cost involved in purchasing additional property.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because currently there are accessory buildings in the same location of the proposed garage. In addition, there are several other nonconforming structures on lake side parcels of property along CR 88 due to the location of the road and topography.
4. The following alternatives could be used to eliminate the need for variance or decrease the extent of the variance being requested: the proposed garage could potentially be placed on the 5 acres north of the highway that the applicants own and meet all required setbacks. The applicants intend to use the proposed structure for storage of vehicles, and because the principal structure/house is located south of the highway, it may be impractical to locate an accessory structure across the highway. In addition, there could be potential safety issues of crossing the highway if the structure were placed on the additional 5 acres north of the highway.
5. The practical difficulty occurred because of the natural topography in the area and the location of the road.
6. Taking everything already mentioned into consideration, the variance should be approved because, with proper screening, the proposed location of the accessory structure will be consistent with the Town of Morse Land Use Plan goals and policies and the Town of Morse Land Use Committee recommendations.

The following conditions shall apply:

1. Screening shall be retained between the garage and highway.
2. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
3. The height of the garage shall not exceed what ordinance allows.

**In Favor:** Coombe, Filipovich, Pollock, Werschay – 4

**Opposed:** None – 0

**Motion carried 4-0**

The second hearing item was **Jerry Pybas**, S26, T56N, R16W (unorganized)

The applicant was present. Jenny Bourbonais presented the case to the Board. The lots are old platted lots of record. The platted road is used by local homeowners in the plat. The 85 foot lake setback comes from shoreline averaging. The applicants have accommodated staff's recommendation to reduce or reconfigure the structure, but now it requires the 66 foot road setback. The applicants have also reconfigured the structure to the center of the lot so that it would meet all sideyard setbacks.

*Board member Coombe* asked about a case heard six years ago that was denied and what difference there is between that case and this current case. *Jenny Bourbonais* stated that the lot was much smaller and they could not meet all other setbacks. Mary Anderson added that this parcel had existing development.

*Donna O'Connor*, Environmental Services, via report, stated the Pybas cabin is served by a 1,000 gallon holding tank installed in 2004 on operating permit #13314 due for renewal in 2013. The holding tank is located across West Bay Road from the cabin. Future septic area is available adjacent to the tank and should be maintained and not impacted in a manner that will negatively affect the installation and operation of an ISTS.

*Jerry Pybas*, the applicant, stated that he had nothing to add.

**CORRESPONDENCE:** *Jenny Bourbonais* read one letter into the record from Edwin and Joan Stewart in support of this variance.

**Motion by Coombe/Pollock** to approve a new principal structure on a lot 0.30 acre in size and 66 feet from road centerline with the following findings of fact.

1. The lot size variance to allow construction on a lot 0.30 acre in size where 1 acre is required is substantial. However, it is an old platted lot of record with existing development. One half acre is required to build on a lot of record.

The applicant's request for a reduced road centerline is not substantial because the applicant is asking for variance to allow a structure at 66 feet where St. Louis County Ordinance 46 requires a 68 foot centerline setback. The structure size could be reduced by 2 feet in order to meet the centerline setback. With the recommendation of Planning Staff, the applicant adjusted the structure design to meet lake setback and structure width requirement facing the lake.

2. The variance will not have an effect on government services since there is existing development on this lot and a new dwelling would not increase service demand. Adequate septic and expansion area have been identified.
3. If approved, the variance would not change the character of the neighborhood. There are similar sized structures at comparable setbacks as the one requested. The neighboring structures are either existing nonconforming structures or required a reduced setback variance for construction.
4. An alternative that could be used to eliminate the need for variance being requested is to reduce the structure depth by two feet to meet the 68 foot centerline setback requirement.
5. The practical difficulty occurred because the property is an old platted lot of record that does not have enough depth to properly meet all setbacks or enough acreage to meet zoning requirements.
6. Taking everything already mentioned into consideration, the variance should be approved for an undersized, platted lot of record at the shoreline averaging setback of 85 feet (which does not require variance) and a 66 foot centerline setback because the applicant is replacing existing development that better meets ordinance requirements. Because of the shallow lot depth, it is difficult to meet all setback requirements; staff would be more in favor of a reduced centerline setback than a reduced lake or sideyard setback. Traffic on West Bay Road is minimal and is primarily used by property owners of the area.

The following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The setback for the proposed structure shall be maximized to the greatest extent possible, and shall be no closer than 85 feet from the shore, as allowed through shoreline averaging.

**In Favor:** Coombe, Filipovich, Pollock, Werschay – 4

**Opposed:** None – 0

**Motion carried 4-0**

The third hearing item was **Kathy Tanski**, S25, T51N, R16W (Grand Lake).

The applicant was present. *Mary Anderson*, Planning and Development Department, presented the case to the Board. *Jan Murtha*, County Attorney's Office, was also present for this hearing. This proposed variance is an after-the-fact request for an addition to an accessory structure with a setback of two feet where ten feet was required. The lots are long and narrow along this part of Grand Lake. The previous request was for a breezeway to connect the accessory structure to the dwelling. That part is no longer being requested. Whenever there is a reduced sideyard relief for structures of this nature, staff's biggest concern is stormwater management. This will be a challenge being that the two structures (neighbor's garage and applicant's garage) are so close and the property slopes towards the lake.

The previous variance request did go to court and the judge remanded it back to the Board of Adjustment.

*Board member Filipovich* asked if the request was to replace a roof or replace the garage. *Mary*

stated that the addition was for a four foot height increase and the footprint did not change.

*Jan Murtha*, County Attorney's Office, explained the transition from the original application to the current application. The reason that the applicant has not requested the same as the original variance was because she wanted to resolve this without the decision being remanded back to the board and the court.

*Board member Coombe* read the variance request from 2009. He asked if the breezeway will be removed. Jan stated that the existing structure built previously will not be expanded. *Mary Anderson* stated that the addition connecting the sauna to the garage was not a new addition and had been there before the previous variance request. *Jan* stated that the roof on the garage will not extend over towards the other accessory structure.

Board member Pollock asked if the adjoining owner could go to court. Jan stated that the neighbor's notice was for the Board's recourse. There may not be a cause of action against the county but he could do as he wanted. It is within the county's discretion to grant these variances.

*Ed Kerzinski*, Environmental Services, via the May 2009 report, stated the residence is connected to the Pike Lake Community Municipal System.

*Steve Cooper*, 6632 River Road, Brooklyn Center MN, attorney, spoke on behalf of the applicant. The breezeway was never constructed and there will be no further work to the other structure. There will be no change in the amount of water. The neighbor has also constructed a new house and garage since the last variance request.

If this was a remodel, they could build up two feet. They built four feet meaning they were out by an additional two feet. They are asking for the structure as it is. If they do not do anything, this would be an incredible eyesore. They want to finish the garage. They wanted to return to the Board with the most minimum request they could.

*Board member Coombe* asked if the Board will approve this but not mention stormwater. *Mr. Cooper* replied that he is neutral on this. His sense is that he does not see why the water situation has changed at all. *Board member Coombe* stated that there are stormwater or rainwater stipulations in the ordinance. *Mary* added that stormwater management is required ten feet or less from the side property line and the structure itself is over 800 square feet. Staff recommends that this condition remain for that reason.

*Board member Pollock* asked if the height increase on the garage would create more runoff given that the neighbor's garage is next to the applicant's garage. *Board member Pollock* asked if this would be general storage, not a living space or with bathrooms. *Mr. Cooper* stated yes it would be for storage.

*Board member Coombe* asked if there could be a second principal structure if the property is on municipal system. *Mary* added that they are only allowed one principal dwelling and from what they have, only general storage would be allowed. *Mr. Cooper* added that Ms. Tanski is only

requesting the addition for general storage.

No audience members spoke in favor.

*Robert Olson*, 5922 North Pike Lake Road, spoke against this request. He made sure that he met all the setbacks when he built a new house and he made sure it would not be an eyesore to the neighbors. He stated that the neighbor's garage was built around trees on his property. He wants the neighbors to go by the ordinance. He feels he has to look at the eyesore every day.

*Board member Werschay* asked if his property has been affected by stormwater runoff. *Mr. Olson* stated that there was a roof on the garage before and that he has not noted any additional runoff as of yet.

**CORRESPONDENCE:** Mary Anderson read three letters into the record from Brooke Shannon, Town of Grand Lake, and Steve and Jean Hennessy in support of this variance request and Robert Olson against this variance request.

## **DISCUSSION**

Board member Pollock stated that staff has made this recommendation. He has extreme difficulties with people doing things without permits.

*Board member Werschay* stated she has an issue with after-the-fact variances. *Board member Coombe* agreed that he has a problem with this. He made mention of the Renville County Supreme Court ruling of 2008. *Board member Werschay* stated that she believes this was intentional, being that the applicant was given information before building that the allowable height increase was two feet.

*Board member Pollock* added that the Board failed to include their reasons for denial when it was previously heard. This case is what it is.

*Board member Coombe* stated that the Board has denied with or without prejudice before and the applicants have returned to the Board because something has changed.

## **DECISION**

**Motion by Coombe/Filipovich** to allow an addition to an accessory structure located two feet from the property line with stormwater management, with the following findings of fact.

1. The request of the applicant is substantial because the applicant is asking for a variance for an addition to an accessory structure that is two feet from the side property line where St. Louis County Ordinance 46 requires a ten foot sideyard setback with stormwater management. Please note however, that Ordinance 46, Article II, Section 6, defines "Remodel" to including roofing and states specifically if roofing replacement does not increase height by more than two feet or increase living space. Remodeling does not require a permit per Article II, Section 1.04 A. The applicant's request would raise the height of the structure four feet.
2. The variance will not have an effect on government services because the lot is already developed for year-round use, is served by a municipal sewage treatment system and

access is provided from a public road.

3. If approved, the variance would change the character of the neighborhood or be detrimental to the neighborhood because the garage is located closer to the property line than allowed and a height increase to the garage would have an impact on the adjacent neighbors.
4. The following alternatives could be used to eliminate the need for variance or decrease the extent of the variance being requested: the applicant could restore the garage to its original height.
5. The practical difficulty occurred because the applicant built without benefit of a land use permit.
6. The construction was initiated in 2009. The construction has not yet been completed.
7. It is not known if the violation was intentional because it was not reported until after construction had begun. The landowner states that she did not know that the height increase on the garage required a permit, because when she inquired about a permit, she was told by Grand Lake Township, which administered zoning at the time, she could build up as long as she did not increase the footprint. She also stated that she had talked to someone in the St. Louis County Planning and Development Department about a permit and was told she could increase the height two feet without a permit. She believes the addition is only two feet out of compliance.
8. The applicant has significantly revised the variance request from the original application considered in May 2009.

The following condition shall apply:

1. The stormwater runoff from the structure shall not directly discharge into the lake or onto the adjacent lot.

**In Favor:** Coombe, Filipovich, Pollock, Werschay – 4

**Opposed:** None – 0

**Motion carried 4-0**

The fourth hearing item was **Veli Torniainen**, S19, T50N, R20W (Fine Lakes).

The applicant was not present. Tim Erkkila, 134 Highway 61 E., Esko, spoke on behalf of the applicant. *Tyler Lampella* presented the case to the Board. The structures in this neighborhood are older, built from the 1940s to 1970s. Because of the size of the addition and the size of the old structure being retained, the dwelling would be more like building a new structure with an older addition added on. The lot is deep and there would be no problem moving the structure further back. There is good screening to the lake and relatively steep slope towards the lake. See alternatives as listed in the findings of fact. There is no real reason that they cannot build away from the lake. Using sentimental reasons as a hardship does not really apply in this case. Staff is not opposed to an addition that meets requirements of the ordinance.

*Board member Coombe* asked if shoreline averaging could be applied for the addition. *Tyler Lampella* stated that shoreline averaging would not be a useful tool in this case, because the proposal is for an addition and shoreline averaging applies to building new or moving a structure.

If he were to move the structure back, he would have to place the structure 25 feet further back than the neighboring cabins or homes, which would not help him out.

*Board member Werschay* asked about the foundation put under the part of the old structure they want to retain. *Tyler* stated that the foundation is made from block and is not substantial. *Board member Werschay* asked how recently the foundation was worked on. *Tyler* stated it was done this fall. *Board member Werschay* asked if there was substantial cost for what they did. *Tyler* stated there is always cost factored in when retaining and remodeling.

Ed Kerzinski, Environmental Services, via report, stated a preliminary SSTS design was submitted with the Board of Adjustment application. The design is for a two bedroom dwelling, 300 gallons per day maximum, 200 gallon per day average daily flows. The system is to consist of a 1,000 gallon septic tank, a 1,000 gallon pump chamber dosing a 4 foot by 86 foot pressure mound on 32 inches of clean sand. This system would require an operating permit. System expansion area is located near primary mound site, near Lake Road on the north property line.

*Tim Erkkila*, the builder, spoke on behalf of the applicant. He passed out a letter from the architect to the Board. The owner built the cabin in the 1960s and the applicant wants to keep this for sentimental reasons. They are asking for 211 square feet beyond what the ordinance allows. The new addition would have bedrooms and other living space. The current structure has a dining room and a living area. They never considered jacking up the retained piece of the structure and moving it back to meet the lake setback.

They will be putting in a new septic system for this addition, which will protect the environment and the lake. There were a few trees taken down around the cabin. The addition will be on the back side and will not be seen from the lake. The county will get a benefit of the increased tax value of the property. The porch is located 65 feet from the lake. Once that part is removed, the portion left will be closer to the 100 foot setback. They also do not want to tear the existing fireplace down.

*Board member Coombe* reiterated that the request is only 211 feet more than what the ordinance would allow and the addition would be to the rear. And the height increase would only be about four feet. *Mr. Erkkila* agreed.

*Board member Coombe* asked if there would be a sunken addition. *Mr. Erkkila* stated they are shortening the walls to bring the roofline down.

*Board member Werschay* asked if staff had seen the fireplace. *Tyler* stated there was no great external evidence, as can be seen in the power point photos.

*Board member Pollock* asked about the square footage of the addition requested in the application. *Tyler* stated that the applicants left out the size of the porch, which staff added in because there is a roof over the porch and it counts as square footage. Then they have to determine the square footage allowed through the formula in the ordinance, based on the lake setback. *Board Member Pollock* inquired what the hardship or practical difficulty is for allowing the addition and if a variance needs to be granted to allow reasonable use of the property.



*Board member Filipovich* asked if the applicants could have the size of addition they are requesting if the addition is moved back. *Tyler* stated they would be allowed the addition and more, including a height of 35 feet.

*Mr. Erkkila* asked about the cost of moving the structure. He feels that the cost would be too high. He stated they never considered moving the cabin. He estimated \$15,000 to move the cabin, plus the cost of a foundation under it.

**CORRESPONDENCE:** None.

## **DISCUSSION**

*Board member Pollock* stated he does not see why there needs to be a large addition behind the cabin when it could be moved back. Even with the cost of moving the existing cabin, it can be done.

*Board member Coombe* stated his concern is the basement. *Tyler* stated that the new construction was recently done and he does not know when the original construction was. *Board member Coombe* stated that the applicant was correct in saying that a smaller structure will get a smaller addition. The applicants are allowed a 400 square foot addition. Somewhere along the line, there is no proof in the presentation or in pictures that the structure could not be moved or a smaller addition built on.

*Board member Pollock* asked about the integrity of the fireplace or if it can even be moved. *Board member Coombe* stated that if the fireplace is a factor, it should be shown that it is a factor through pictures and stated that it cannot be moved.

*Board member Werschay* stated that the applicant should have presented pictures or something to go along with the fireplace. She added there was an existing basement, but how much of this will be wasted dollars on the new foundation. *Mary Anderson*, Planning and Development Department, stated that the burden of proof was on the applicant and they did not show proof. This will not stop the applicant from coming back with a different proposal in the future.

## **DECISION**

**Motion by Pollock/Coombe** to deny the variance request to allow an addition, larger than allowed, to a nonconforming dwelling based on the following findings of fact.

1. The request of the applicant is substantial because the applicant is asking for variance for an addition that is 150 per cent of the size allowed.
2. The variance will not have an effect on government services for the following reasons:  
1) the property is currently developed with a dwelling, and 2) the addition will not increase the need for government service.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the nearby dwellings are also nonconforming; however, they were constructed between 1945 and 1970. Constructing a new dwelling or a large addition at a nonconforming setback would be detrimental.
4. The following alternatives could be used to eliminate the need for variance or decrease

the extent of the variance being requested: 1) the existing dwelling could be moved to a conforming lake setback thereby obviating the need for a variance; 2) an appropriately sized addition could be constructed; 3) a new dwelling could be constructed at the appropriate setback.

5. The practical difficulty has not been sufficiently demonstrated by the applicant. The applicants state that the small size of the existing structure precludes them from constructing an addition of sufficient size; however, the small size of the existing structure makes it that much easier to move it to a conforming setback. The applicants created part of the difficulty by replacing/repairing the failing foundation under the existing dwelling. Retaining the existing structure is due primarily to sentimental reasons.
6. Taking everything already mentioned into consideration, the variance is not warranted because reasonable alternatives exist and the request is a substantial deviation from the allowed addition size.

**In Favor:** Coombe, Filipovich, Pollock, Werschay – 4

**Opposed:** None – 0

**Motion carried 4-0**

The fifth hearing item was **Debrah Hunter**, S9, T57N, R17W (Fayal).

The applicant was present. *Mark Lindhorst* presented the case to the Board. A 16 foot by 16 foot addition to the existing structure is what pushed the structure over the 40 percent lot width standard. The applicants had received a land use permit based on inaccurate information provided in the application.

*Board member Coombe* asked what the Fayal Mitigation Points. Mark stated that they need to choose four points from a list of many possible mitigation points that were developed during the land use plan process.

*Donna O'Connor*, Environmental Services, via report, stated the Hunter property is served by the Fayal municipal sewer system.

*Debrah Hunter*, the applicant, asked about the Fayal Mitigation Points. *Mary Anderson*, Planning and Development Department, stated the applicant may choose the points from the list that she intends to implement.

*Board member Pollock* asked what triggered the variance. *Mark Lindhorst* stated that there was a previous variance heard that included more requests than the current proposal. That variance was denied and although staff had recommended approving the 16 by 16 foot addition at the previous hearing, the Board decided that no variances should be allowed and the applicant would have to come back before the Board to request the addition or remove it to be in compliance. *Board member Pollock* inquired about the 12 foot discrepancy on the width of the house on the drawing. *Ms. Hunter* stated that she was not aware of the error and this was an error from the builder.

*Tim Hunter*, the applicant, stated he made a mistake on the original drawing and did not know about the mistake until their first variance request was heard.

No audience members spoke.

**CORRESPONDENCE:** None.

## **DECISION**

**Motion by Werschay/Filipovich** to approve a request to allow the structure at a width of 44 percent, with the following findings of fact:

1. The request of the applicant is substantial because the applicant is asking for an after-the-fact variance of 44 percent lot width where St. Louis County Ordinance 46 allows 40 percent.
2. The variance will not have an effect on government services for the following reasons: the property is accessed off a public road and is served by municipal sewer and water.
3. If approved, the variance would change the character of the neighborhood because the existing development in the area is consistent with the 40 percent lot width. However, the structure is located 96 feet from the lakeshore where a minimum of 75 feet is required.
4. The following alternatives could be used to eliminate the need for variance or decrease the extent of the variance requested: an addition is allowed without variance to the rear or front of the structure as long as it meets the required setbacks.
5. The practical difficulty occurred when the landowner provided information on a land use application that was not accurate; which resulted in a permit being issued for an addition in 2006. The applicant's drawing indicated the structure to be 60 feet wide but in reality the structure was 72 feet wide.
6. The construction was permitted (#46159) in 2006 based on inaccurate information provided in the land use application.
7. There are no similar structures in the area. Most of the principal structures in the area are consistent with the 40 percent lot width standard.
8. The county would not benefit by the enforcement of the ordinance if compliance were required because the size of the lot and the increased setback of the structure mitigate the effect of the development on the surrounding area.
9. Staff does not believe the violation was intentional because the applicant applied for and was issued a land use permit.
10. Taking everything already mentioned into consideration, staff is recommending approval, because the applicant submitted and was issued a land use permit. It is not assumed the applicant intentionally provided inaccurate information and the size of the lot and the setback of the structure mitigate the effect of the development. Town of Fayal Comprehensive Land Use Plan also requires mitigation points for variances.

The following condition shall apply:

1. The applicant shall implement Fayal Mitigation Points.

**In Favor:** Coombe, Filipovich, Pollock, Werschay – 4  
**Opposed:** None – 0

**Motion carried 4-0**

The sixth hearing item was **Jean and Frank Russ/Mark and Donna Leese**, S35, T57N, R17W (Fayal).

The applicants were present. *Tyler Lampella* presented the case to the Board. The original owner of this property owned 120 acres and received a land use permit for a garage. The Russ's bought a portion of the property with a house and garage. The Leese's have bought the property and now staff has found out that the garage was constructed too close to the river. There are few houses in the area. There is good screening from the river. There would be room to build a garage at 200 feet.

*Board member Filipovich* asked if the applicants could rebuild the garage if something happened to it. Tyler stated a condition could be added that a new garage be constructed at the 200 foot setback.

*Donna O'Connor*, Environmental Services, via report, stated the Russ home is served by a trench system that was installed in 1996 without a final inspection. The system was inspected on September 25, 2010 and is considered non-conforming and no upgrade is required. Adequate replacement area is located east of the current ISTS and has been designated and should be reserved.

*Frank Russ*, the applicant, stated that he had nothing to add.

*Mark Leese*, the current property owner, stated they had a price estimate of \$20,000 to move the building to the 200 foot setback.

No audience members spoke.

**CORRESPONDENCE:** None.

## **DECISION**

**Motion by Coombe/Pollock** to approve a request to allow an accessory structure (garage) to be located 136 feet from the St. Louis River where 200 feet is required, with the following findings of fact.

1. The request of the applicant is substantial because the applicant is asking for variance(s) of a 136 foot river setback where St. Louis County Ordinance 46 requires a 200 foot river setback. This is a 32 percent reduction of the required setback.
2. The variance will not have an effect on government services for the following reasons: The building in question is an accessory structure. Government services are primarily related to the fact that there is an established residence on the property.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the screening between the river and the structure is good and development along this portion of the river is low.
4. The following alternative(s) could be used to eliminate the need for variance or decrease

the extent of the variance being requested: the structure could be removed.

5. The practical difficulty occurred because the previous owners of the property built the garage in the wrong spot.
6. The construction was completed in 2005.
7. There are no similar structures in the area.
8. The county would benefit by the enforcement of the ordinance if compliance were required because, in general, this situation sets a bad example for the community.
9. Staff does not know that the violation was intentional because the current owners of the property did not construct the building. It is not known if the original property owners simply made an error in measurement or if it was intentional.
10. Taking everything already mentioned into consideration, the variance should be approved because the infraction was not the result of actions of the current owner and the location of the structure can be mitigated.

The following condition shall apply:

1. The applicant shall implement Fayal Mitigation Points.

**In Favor:** Coombe, Filipovich, Pollock, Werschay – 4

**Opposed:** None – 0

**Motion carried 4-0**